to "calling areas," and has amended the definition in §23.106(c) to define a "calling area" rather than a "local calling area."

Nearly all parties commented either generally or specifically about the provisions of §23.106(d) relating to carrier-initiated changes and verification procedures. OPC requested access to the records of all carrier-initiated changes upon request. CU commented that both the Attorney General and OPC should have access to the verification information maintained under §23.106(d) because they represent consumers. The commission first notes that S.B. 253 did not include provisions for such access to the information maintained pursuant to the rule. The commission does not have the authority under S.B. 253 or PURA to grant a third party, including OPC or the Attorney General, access to private customer verification records maintained by telecommunications utilities. The commission further notes that OPC and the Attorney General, as representatives of consumers, have an alternative route for access to the verification information. OPC and the Attorney General can obtain access to records via the consumers they represent. Under the rule, a customer can request from the carrier access to the verification information.

SWBT objected to the reference to carrier-initiated change by "written solicitation" in §23.106(d). As explained above, the commission believes carrier-initiated changes include changes resulting from direct mail solicitation, as well as print advertising which contains LOAs or other vehicles which could be considered to result in carrier-initiated

changes. Therefore, the commission believes the term "written solicitation" is appropriate. TSTCI suggested that the carrier initiating the change should be required to submit the verification to the carrier who will be responsible for changing the customer's service. The commission notes that the FCC is currently addressing the issue of the duties of the executing and submitting carriers in its rulemaking; the commission believes this matter should be addressed after the FCC makes its decision. TTA commented that §23.106(d) should be redrafted to specify that the carrier must tender only those carrier records relevant to a customer's challenge rather than records for an entire twelve-month period. The commission disagrees, and believes that the proposed language already addresses TTA's concerns.

BCI commented that the rules should impose even stricter standards for the verification of telemarketing sales. BCI suggested that for telemarketing sales, the commission eliminate two of the four methods of verification of carrier-initiated change orders permitted under §23.106(d): §23.106(d)(2), verification by electronic authorization; and (d)(4), verification by information package. The commission disagrees. S.B. 253 expressly states that the four types of verification in §23.106(d) are acceptable. Further, §23.106(d) is consistent with current FCC rules, which also expressly allow for each of the four methods.

BCI also suggested that §23.106(d)(2)(B) be modified to address situations where telecommunications networks lack the technical ability to forward ANI information. The

commission agrees that some switches in Texas may not have the capability to forward ANI information as is required to use the electronic authorization method. The commission accordingly has amended its rule to state that the electronic authorization method is not an available verification option in exchanges where automatic recording of the ANI from the local switching system is not technically possible. BCI also suggested that §23.106(d)(3) be amended to require verification of ANI under the third party verification option. The commission disagrees. Under the proposed rule and the FCC rule, independent third party verification requires that the customer give appropriate verification data. In addition, §23.106(d)(3) states that third parties must be independent, appropriately qualified, and in a physically separate location. This language addresses BCI's concerns of unscrupulous behavior. The commission also notes that ANI information is not required under S.B. 253 or the FCC rules for third party verification.

TRA commented that the notice requirements in §23.106(d)(4)(A)(iv), (vi), (vii), and (xii) exceed the FCC rule requirements and will raise the costs of using information package verification procedures, which must be created specifically for Texas customers, and will discourage providers from using the information package verification option. The commission first notes that the state-specific information in §23.106(d)(4)(A)(xii) parallels the federal information required in FCC rule §64.1100(d)(9) and therefore does not impose unreasonable costs on the procedure. Further, the commission disagrees with TRA that the requirements in §23.106(d)(4)(A)(iv), (vi), and (vii) will significantly raise costs of verification by this method. §23.106(d)(4)(A)(iv) and (vii) merely require a

carrier to tell the customer what telephone number(s) and type(s) of service (*e.g.*, local or interLATA long distance) are being changed. §23.106(d)(4)(A)(vi) contains the same requirement carriers are already required to follow under current commission rules in §23.97(i)(1)(C)(iv)(IV), (V) and (VI) for LOAs. The only difference is the addition of a requirement in §23.106(d)(4)(A)(vi) that the actual amount of the switch charge be stated. The commission agrees with the comments of TRA and others that the requirement to state the exact amount of the charge should be amended to require a more general statement. The commission believes, however, that consumers should be provided with at least an approximate amount of the charge, based on the industry average charge in Texas. The commission has amended §23.106(d)(4)(A)(vi) to state: "I understand that I must pay a charge of approximately $ (industry average charge) to switch providers. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company."

Sprint stated in its comments that §23.106(d)(4) requires Texas-specific information to be included in the mailing, which is inconsistent with federal rules and will require changes to the current process. In particular, Sprint objected to §23.106(d)(4)(A)(v) as very cumbersome and requiring system changes which could prove to be prohibitively expensive. The commission notes that §23.106(d)(4)(A)(v) parallels FCC rule §64.1100(d)(4), exactly. Sprint further noted that it does not currently have the ability to send the name of the person ordering the change as proposed in §23.106(d)(4)(A)(viii)

and currently sends the information to the person as it appears on the local phone account. The commission finds this comment confusing. Under commission rules, for a carrier-initiated change, a carrier must obtain authorization and verification from the actual subscriber to the line. No person other than the telephone subscriber has the authority to make a change in service. Finally, Sprint notes that §23.106(d)(4)(A)(vi) will require knowledge of the amount of the primary interexchange carrier (PIC) change charge for the specific LEC serving a specific customer which is very burdensome. The commission agrees and has amended the language as discussed above.

TEXALTEL also recommended changes to §23.106(d)(4)(A)(i), (ii), (v) and (vi). The commission notes that §23.106(d)(4)(A)(i), (ii), (v) parallel FCC rule §64.1100(d)(1), (2) and (4) exactly. The commission has amended §23.106(d)(4)(A)(vi) to require that the industry average charge rather than the exact charge for a specific LEC be provided.

TEXALTEL and LCI commented that the language in §23.106(d)(4)(B) is unwieldy and recommended making the language more consistent with the FCC's language. In its comments, OPC noted there seems to be some type of grammatical problem with (4)(A) and (B) that leads to confusion regarding the verification requirements. OPC suggests that paragraph (4) be changed as follows: ". . . subparagraph[s] (A) and the customer does not cancel service after receiving the notification pursuant to subparagraph (B)." The commission agrees to the clarification suggested by OPC and has amended the rule accordingly.

Several parties commented that the state-specific requirements of §23.106(e)(3)(A) and (B) serve to raise providers' operating costs and reduce the desirability of LOAs as an effective verification option. The commission agrees with the comments to the extent that the requirement to state the exact amount of the switchover charge be deleted. As now required in §23.106(d)(4)(A)(vi), the commission has amended §23.106(e)(3)(A) to state: "I understand that I must pay a charge of approximately $ (industry average charge) to switch providers." The commission has also amended §23.106(e)(3)(B)(iii) to delete the requirement to specify the exact amount of the charge and instead to require that the industry average charge be stated. The commission disagrees with the comments that the rule should not incorporate the actual text of the LOA. The commission believes this measure prevents any misunderstanding as to the requirements of the rule, and notes that the proposed text is consistent with FCC rules.

In its comments, TEXALTEL noted LOA forms must be separate or separable from promotional material, but has observed that some contest entry forms make it impossible to enter the contest without submitting the LOA form. TEXALTEL suggests the rules require that contest entry forms and LOA forms also be separate or separable. The commission notes that the rule already requires LOA forms be separate or separable and not combined with inducements of any kind (*e.g.*, contest entry forms), except that LOAs may be combined with checks which meet the requirements of the rule. The commission

therefore believes any contest entry forms that require the submission of the LOA form to enter the contest are in violation of §23.106.

GTE recommended that the proposed rule language be modified to address "PIC change freeze" verifications in addition to "PIC change" verifications, and recommended adding subsection §23.106(e)(4)(A): "An LOA format shall be used for a customer to take action in order to freeze a current telecommunications utility, such freeze can be changed only through the execution of a subsequent LOA by the consumer." TEXALTEL supported GTE's suggestion. The commission notes that S.B. 253 did not address preferred carrier (PC) freezes, but the FCC rulemaking on slamming does address whether verification procedures should apply to PC freeze solicitations. The commission therefore disagrees with GTE and TEXALTEL that PC freeze provisions should be added at this time.

OPC recommended adding the term "nonpublic" to define "customer specific" information in §23.106(f) so that it conforms with S.B. 253. CU also noted the proposed rule fails to include the term "nonpublic." CU argued that, while social security numbers and drivers license numbers may be customer specific, such public information can be used by companies engaged in fraud to falsely prove that a customer initiated a change which in fact was unauthorized. CU recommended the commission establish some boundaries to help ensure carriers use truly nonpublic information as verification. SWBT also agreed that the term "nonpublic" should modify "customer specific" information.

in the FCC proceeding, and the commission will therefore address the issue of more specific delineation of utility obligations after the FCC's decision. More specifically, TSTCI also commented that the slamming carrier (an IXC) does not have the ability to return the customer to his original IXC. TEXALTEL also stated §23.106(g)(1)(A) will require industry cooperation and noted that in some cases, only the original carrier can reconnect the slammed customer, especially in the case of facilities-based local competitors, and that the offending carrier can notify the original carrier but cannot accomplish the reconnection. AT&T noted that this section imposes an obligation that the carrier may not have the physical capability of fulfilling, and suggested that it be modified to read that the slamming carrier will take all steps within its control to accomplish the switch over within the required period. SWBT noted that systems do not exist for a telecommunications utility to transfer a customer to a different telecommunications utility, and suggested the rule require the slamming company to return the customer to the original utility "where technically feasible" and to direct the customer to the local exchange company (LEC) or the original utility where systems do not permit the slammer to make the change. Because the telecommunication utility that initiated the unauthorized change may not have the physical capability to return a customer to his original carrier, the commission has amended §23.106(g)(1)(A) to require the utility that made the unauthorized change to return the customer to the original utility where technically feasible within three business days of the customer's request, and if not

feasible, to take all action within the utility's control to return the customer to the original utility within the required time period.

TEXALTEL suggested §23.106(g)(1)(B) be modified to require "prompt" payment and noted that in traditional unauthorized PIC changes, the LEC would bill the IXC for the unauthorized changes and the IXC would pay within the normal payment cycle. TEXALTEL further noted this was the best treatment for the customer, as the changes are handled among the carriers. Finally, TEXALTEL believed it is unreasonable to require that the offending carrier submit payment before receipt of billing and that 20-30 days is reasonable to allow time for normal issuance of checks and mailing time. MCI stated that requiring payment to another carrier within three days is unnecessary, burdensome, and does not affect the end-use customer. Further, MCI suggested the phrase "within three business days of the customer's request" be deleted, and noted the time frames for providing billing records, reimbursing the original carrier and reimbursing customers for excessive charges dated from the customer's request are simply unworkable. Finally, MCI recommended that utilities provide billing records within 30 business days after having received payment for the entire final amount due, and that reimbursements to utilities and carriers occur within 45 business days after receipt of such final payment. SWBT recommended that the rule be changed to permit the required actions on billing and payments in §23.106(g)(1)(B)-(E) to occur within a "reasonable time." LDI commented that the recommended timeframes in §23.106(g)(1)(C)-(E) were unworkable. LDI suggested a generic time period of "up to three months" to allow all parties to obtain

the information required to resolve the customer's complaint. TSTCI stated that the language in §23.106(g)(1)(B) should clearly reflect that the slamming carrier should be responsible for (1) the refund of any charges to the customer that resulted from the unauthorized switch, and (2) the payment of charges to the telecommunications utility responsible for switching the customer back to his original provider. TSTCI further stated the proposed rule should more specifically address the slamming carrier's responsibility for refunding the exact charges (*i.e.*, the PC change charge) associated with the unauthorized carrier change to the customer and the original telecommunications utility. The commission is persuaded by the comments of various parties that additional time is necessary to comply with the billing and payment obligations under the rule. The commission has amended §23.106(g)(1)(B) to provide the unauthorized carrier with five business days to pay all usual and customary charges associated with returning the customer to the original utility. This amount of time is consistent with commission rule §23.61(e)(2) relating to the time period for installation of service. Payment for reconnection within five days will ensure that reconnection of the customer is not delayed.

TEXALTEL commented that §23.106(g)(1)(C) requires provision of more data than is needed. TEXALTEL suggested billing records be provided upon request of the consumer or the original telecommunications utility where necessary to effect restoral of frequent flyer miles, etc. Sprint stated the seven day requirement creates an extreme hardship for telecommunications utilities, and noted a timing problem is also created because of the

the billing records. The commission believes that 30 business days is sufficient time to complete the process and for an unauthorized carrier to pay the original utility and the customer.

TEXALTEL noted the FCC rules require that all amounts collected by the offending carrier are to be paid to the original carrier. TEXALTEL argued that the commission's proposed §23.106(g) is therefore preempted and unlawful. The commission disagrees. TEXALTEL referred to proposed FCC rules, not current FCC rules. Further, the remedies provided under §258 of the FTA96 are in addition to any other remedies available by law. The commission therefore notes that S.B. 253 requires an unauthorized carrier to pay any excess charges to the customer. This bifurcated procedure which refunds excess charges directly to the customer is more pro-consumer than a requirement that the unauthorized carrier remit all charges received to the properly authorized carrier. While the FTA96 does not incorporate a procedure for direct remittance to the customer, the broader pro-consumer provisions of the commission rule provide additional protections to the customer without being preempted by the FTA96 or any FCC rule enforcing the FTA96 provisions. The FCC cannot preempt or affect these additional customer rights under state law.

For §23.106(g)(2)(B), OPC and CU requested that the phrase "all benefits associated with the service(s)" be explained. Noting that the wording in this subsection leaves the impression that the customer receives the "customer benefits" (*e.g.*, frequent flyer miles)

only for service prior to the unauthorized change, CU proposed the following language: "(B) provide to the customer all benefits associated with the service that would have been awarded had the unauthorized change not occurred." The commission agrees with the recommendations of OPC and CU and has amended §23.106(g)(2)(B) to reflect the requests.

MCI commented that maintenance of unauthorized change records pursuant to §23.106(g)(2)(C) is costly and unnecessary. MCI further noted the commission, on its own motion, can pursue compliance and enforcement of its rules on a case-by-case basis based upon the complaints it receives. Thus, MCI suggested that if the commission finds that a telecommunications utility has repeatedly engaged in violations of the rules, it could, as part of its sanctions, require the offending utility to begin to maintain such records as a condition to continue to operate. The commission disagrees. The records maintained pursuant to this section will provide a valuable tool for the commission in its enforcement of slamming prohibitions.

Commenting on §23.106(h)(1), TRA suggested that instead of requiring providers to give notice in both English and Spanish, the Commission should allow providers to give notice in the same language that the company used to market its services. LDI applauded the commission's customer education efforts but noted that many carriers do not have a physical address in the state of Texas and suggested that the distinction be made clear that this requirement is intended for local exchange companies (LECs) and the carrier

selection process associated with choosing a LEC. MCI noted that this proposed subsection would require no less than 15 notices annually to customers regarding their rights relative to unauthorized changes (assuming the customer receives one bill for their combined local and long distance services). MCI believed that the notices by separate, annual mailings and via each and every bill are unnecessary, duplicative, and costly, and should be deleted from the rule. TEXALTEL believed the notice requirements in this subsection are extremely excessive and will cause the industry to incur extraordinary expenses that are not necessary and are not in the public interest. TEXALTEL suggested the rules leave to the discretion of the telecommunications utility whether to provide the notice in both languages or to provide the notice in English but state in Spanish that a Spanish version is available on request, and provide the necessary phone number and address to make the request. TEXALTEL also stated that it does not believe the commission wants to deal with requests from 900 or so non-dominant carriers for exemption from the Spanish requirements nor is it efficient for the carriers to be required to go to this effort for an exemption for which they are all expected to qualify. TEXALTEL further believed the requirement for a direct mailing is also unnecessary and imprudent, and suggests a very simplified notice be given to consumers upon adoption of the rule by inclusion in telephone directories. TEXALTEL stated that it sees no reason for the IXC to have to send a duplicate notice and notes this would be tremendously burdensome because IXCs that rely on LEC billing and collection often do not know who their customers are and do not have the information available to them to comply with the

notice requirement. TEXALTEL pointed out that the requirement that the first notice be completed by the sooner of September 30, 1997 or the effective date of the rule is impossible and suggests that if any notice is to be required, it be 90 days after adoption of the rule. Further, TEXALTEL noted that if the commission insists on bilingual notices, then publication of the first notice should be one year after adoption of the rule to allow time for a large number of exemption requests to be filed and processed by the commission. Finally, TEXALTEL believed the requirement to list a physical address where bills can be paid is unreasonable since it has nothing to do with slamming. TEXALTEL noted the commission has no jurisdiction to require that non-dominant carriers implement this requirement, and suggests this requirement be dropped and dealt with in the context of billing rules if it is found to be a problem.

SWBT stated the physical address requirement in §23.106(h)(2) is unnecessary for a slamming rule because where a customer can pay bills is not relevant to implement slamming prohibitions, and recommended deletion of this requirement. Further, SWBT noted that the requirement in §23.106(h)(3) may not be the most efficacious method as current systems may only accept changes from the receiving carrier. SWBT recommended the notice should advise the customer to contact the original company selected by the customer. SWBT also objected to the mailing of a separate notice. SWBT noted the language in S.B. 253 suggests it was the intention of the Legislature that if a notice needed to be sent, it was at the commission's expense, not that of telecommunications utilities. SWBT further noted that a bill insert notice, sent once, and

funded by the commission, will be adequate and thereafter new customers can be informed of their rights under the rules by the utility selected. SWBT proposed the language of the rule require the notice (if it must be sent at all) to be sent by November 1 or 30 days after adoption of the rule, whichever comes later. Finally, SWBT stated the requirement in §23.106(h)(4)(B) to include the notice in directories imposes a continuing expense which outweighs its value. SWBT further noted this requirement is inconsistent with S.B. 253 which requires the commission's rules be competitively neutral and that the commission, not utilities, is charged with the notice obligation. TSTCI stated that a separate mailing is not required or necessary, and noted that this is a more costly method of notice distribution than mailing a bill insert. TSTCI stated the legislation requiring the commission to implement this proposed rule gave the direction that the "Commission may notify customers of their rights under these rules." Therefore, TSTCI suggested the commission consider making the notice a part of the "Your Rights As A Customer" information ILECs are required to provide to customers or publish in their directories.

TTA believed the requirement for billing addresses in §23.106(h)(2) may impose an undue financial burden on telecommunications utilities, particularly the ILECs, and suggested the language be amended to require that the notice provide that bill payment locations would be available upon request. In its comments of §23.106(h)(4), TRA noted the commission should not require providers to list a physical address where customers can pay bills since many smaller providers, including IXC resellers, will likely not maintain local offices within the state. TRA further noted that the requirement that

providers list their name and an address and toll-free telephone number at which they can be reached should be sufficient to satisfy customer inquiries. Therefore, TRA suggested the proposed section be amended to allow providers to send notice only when initiating service or when customers request such information. TRA opined the separate mailing requirement is duplicative and will only serve to raise providers' costs without benefiting the public with new or "hard-to-find" information. TTA believed the requirement in this subsection would impose costs that far exceed the benefits to be gained in terms of customer education, and suggested the commission allow telecommunications utilities to choose to provide the required notice of customer rights as a bill insert or separate mailing. TTA recommended that the notice deadline of September 1 or sooner be amended to provide more time for compliance by companies to reach their entire customer base, and that the deadline be modified to allow for the notice to be compatible with existing billing cycles. GTE noted in its comments that §23.106(h)(4)(A) would place an unfair financial burden on the LEC industry. GTE proposed the elimination of language in this subsection that refers to notice "by separate mailing." AT&T commented that the annual notice requirement in this subsection will impose an incredibly expensive obligation that will result in multiple, redundant notices to the same customers. AT&T noted the requirement is inconsistent with S.B. 253 since this section directs that the commission, not the carriers, may notify customers of their rights. Further, AT&T noted that notice of consumer rights is legitimately considered part of the enforcement function and would be subject to funding by administrative penalties. OPC

supported notice by separate mailing, and suggested the commission include a waiver provision that would allow notice by bill insert for utilities that can establish good cause for the waiver.

The commission first notes that S.B. 253 grants to the commission the authority to implement slamming rules that apply to non-dominant carriers as well as dominant carriers. The commission further notes that the Spanish language requirements in §23.106(h)(1) are consistent with those in commission rule §23.61, relating to the information package "Your Rights as a Customer." Because not all carriers may have a physical location to pay bills within Texas, the commission has amended §23.106(h)(2) to delete this requirement. The commission was persuaded that the separate mailing and annual notice provisions were unnecessary and has deleted the requirement under §23.106(h)(4)(A) that notice be made by separate mailing, and that an annual notice be made. The commission has also amended §23.106(h)(4)(A) to remove the requirement that notice be sent by September 1, 1997, leaving the requirement that notice be sent within 30 days of the effective date of this section.

In its comments on proposed §23.106(h)(2)and (3), CU recommended the commission include in the requirements of the notice the hours the telecommunications utility has staff available to answer customer complaints and the commission's phone number for handling complaints. The commission disagrees and has amended these sections as discussed above. Further, CU recommended the term "benefits" be defined or elaborated

upon and suggests the following language: "Benefits" are additional products or services (such as frequent flyer miles) offered to customers for subscribing to a carrier's telecommunications service." The commission agrees and has amended the notice.

TSTCI noted the proposed "Customer Notice" was inadvertently omitted from proposed §23.106(h)(3) as published in the *Texas Register*. The commission notes that the proposed customer notice was published as Figure 2: 16 TAC §23.106(h)(3) at 22 TexReg 6192. TSTCI believed the revisions to the notice which reference "phone company/phone provider" may serve only to confuse the customer. TSTCI strongly suggested the commission revisit the customer notice and more clearly indicate the "provider" (*i.e.*, local or long distance) who is responsible for taking action to correct the unauthorized change. The commission disagrees. The language of the notice was deliberately crafted to be more accessible and easily understandable to customers.

OPC suggested the proposed subsection §23.106(i) track the legislation exactly. OPC further suggested the commission should not try to characterize in the rule itself what behavior will be considered "repeated" violations and what behavior will constitute "repeated and reckless" violations. Finally, OPC believed the commission will want to retain the most discretion possible to analyze on a case-by-case basis the various factors which will obviously influence the imposition of penalties on companies. SWBT noted §23.106(i)(4) allows a finding of recklessness upon the existence of two incidents and recommends this subsection be modified as well. Sprint believed the ambiguousness of

subsection §23.106(i)(3) and (4) could lead to improper results. Therefore, Sprint suggested a more objective standard be set. Further, Sprint recommended the commission conduct a workshop to more clearly understand the systems impact of this rule and allow for additional time (four to six months) to implement this rule. SWBT recommended that the commission adopt a rule which takes into account the relative size (by number of customers) of the telecommunications utility before penalties are imposed (more fair and avoids liability where there is simply a misunderstanding with as few as two customers.) MCI believed this subsection raises a number of due process concerns. MCI suggested the rule be revised to state at both paragraphs (1) and (2) "Upon a commission staff request of any records pursuant to this paragraph, the commission staff shall notify the utility in writing, of all reason(s) that have prompted the commission's request." In addition, MCI requested that paragraphs (1) and (2) be revised to state that the request by commission staff must be written and must be directed to the attention of the utility's legal/regulatory department. Further MCI believed paragraphs (3) and (4) fail to expressly state that the utility is entitled to hearing and recommends the following revision to both paragraphs: "If the commission finds, after a hearing on the occurrence of the violation, that a telecommunications utility. . . ." MCI argued paragraphs (3) and (4) violate PURA and that Section 1.3215(e) imposes the burden of proof on the utility that the alleged violation was accidental or inadvertent. MCI stated such burden is appropriate as accidents or inadvertent incidents can happen within 30 day periods. MCI stated that the proposed language denies the utility due process and by operation of law

converts that possible accidental or inadvertent unauthorized change into a violation subject to administrative penalty and recommended deletion of the accidental/inadvertent language. MCI further noted paragraph (4) raises the same concern, and recommended the accidental/inadvertent language be deleted. TEXALTEL stated the requirements in §23.106(i)(1)-(4) appear to imply that three incidents of slamming within 30 days will not be deemed "accidental or inadvertent" and suggests severe sanctions should be automatic. TEXALTEL further suggested that the next to the last sentence in (3) be stricken and if enforcement situations arise, the commission look at specific facts and exercise its judgment. OPC noted the enabling legislation makes no reference to slamming incidents that will be "deemed accidental or inadvertent." OPC supported the intent behind the language in §23.106(i)(3), but believes the characterization of incidents that will not be deemed accidental or inadvertent leads one to assume that there are incidents that will be deemed accidental or inadvertent. OPC noted it is unsure what is meant by the "30 day cure period" and urged that it be deleted because it has no statutory basis. Further, OPC suggested deletion of the language which refers to accidental or inadvertent slamming incidents. Finally, OPC suggested deletion of the language in §23.106(i)(4) which has no statutory basis.

The commission disagrees with the parties that changes should be made to §23.106(i). The commission has authority under S.B. 253 and PURA to require the maintenance and production of records under §23.106(i)(1) and (2). Further, the commission is not required to notify a utility of the reason(s) that have prompted the commission's request

for a record(s). The commission has considered the comments regarding the "accidental or inadvertent" and "repeated and "reckless" language in §§23.106(i)(3) and (4), but is not persuaded that the provisions should be amended. The commission believes §§23.106(i)(3) and (4) provide fair notice to telecommunications utilities as to the nature of the proscribed conduct and the standards to which parties will be held when claims of accidental or inadvertent are raised. Further, the commission believes the language of §§23.106(i)(3) and (4) does not prevent the commission from looking at specific facts and exercising its judgment accordingly.

SWBT commented that §23.106(j), which requires the identification of both the LEC and the IXC on the first page of a bill, would cause problems in the case of multiple-line accounts where more than one PC may be selected. SWBT suggested adding language which requires that the IXC associated with the main billing number be identified on the first page, with any additional information to be printed on a subsequent page. The commission understands that the first page of the bill may not have sufficient space to allow all IXCs of multiple-line accounts to be printed. The commission has amended the rule to allow that, to the extent that multiple IXCs will not fit on the first page of a bill, the remaining IXCs may be displayed elsewhere in the bill. TTA suggested §23.106(j)(2) be redrafted to establish that providers of local exchange service which also bill for interexchange services be subject to the disclosure requirement only if there is a "direct" billing arrangement between the local service provider and the primary interexchange service provider. TTA also stated that the requirement in (j)(4) is burdensome and

exceeds the legislative direction found in S.B. 253. TTA suggested that §23.106(j) should not require that consumer notice be placed on the first page of each bill. OPC and CU disagreed with TTA's comments that LECs should be exempted from listing a customer's primary interexchange carrier whenever there is no direct relationship with the primary interexchange carrier. The commission agrees with OPC and CU. S.B. 253 does not specify that the billing relationship must be the type of direct contractual relationship contemplated by TTA. TEXALTEL similarly suggested that PICs not be identified as required in (j)(2) since the bill is not always from the PIC. The commission notes that the purpose of (j)(1), (2), and (3) is to give the customer the ability to identify when an unauthorized carrier change has occurred. The identification of the provider for each type of service on the relevant bill is necessary to determine if an unauthorized switch has occurred. TEXALTEL also argued this section has no connection to slamming and the commission lacks jurisdiction to enforce compliance by non-dominant carriers. The commission disagrees. S.B. 253 expressly grants the commission authority to promulgate these provisions. TEXALTEL also commented that the language in §23.106(j)(3) could be read to require that if a LEC provides billing for any IXC, that it must print the PIC on all of its bills. The commission believes that the rule is clear in its application to each customer's bill and that no revision is necessary.

TRA commented that the billing programming costs to implement the commission contact information in (j)(4) is overly burdensome. Both TRA and MCI noted that the information provided in (j)(4) is duplicative of information which will be provided

pursuant to subsection (h). TRA recommended that the requirement in (j)(4) should be deleted in favor of allowing carriers to disclose service changes and references to the commission's Office of Customer Protection in their notices of customer rights. The commission imposes the customer notice of (j)(4) as directly required by S.B. 253. In addition, TTA noted that S.B. 253 does not require that the customer notice in (j)(4) must be placed on the first page. The commission agrees with the comment of TTA and due to limited space on the first page amends (j)(4) to require that a bill for telecommunications service must place the information prominently on the customer's bill, which may or may not be the first page of the bill.

TSTCI commented that customer confusion arises when a primary IXC resells its service to "underlying carriers" unbeknownst to the customer. OPC and CU agreed that this is a problematic issue in their reply comments. The commission believes that compliance with §23.106 will eliminate this situation; the rule is clear in stating that the primary interexchange carrier is the provider which must be identified. This issue is also more specifically addressed by the FCC in its proposed rules.

This new section and the amendment are adopted under the Public Utility Regulatory Act, 75th Legislature, Regular Session, chapter 166, §1, 1997 Texas Session Law Service 732, 733 (Vernon) (to be codified at Texas Utilities Code Annotated §14.002 and §14.052) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction,

including rules of practice and procedure; and specifically, Texas Senate Bill 253, 75th Legislature, Regular Session (1997), which sets out the manner in which a telecommunications utility is permitted to switch a customer from one telecommunications utility to another in the State of Texas.

Cross Index to Statutes: PURA §14.002 and §14.052.

§23.106. Selection of Telecommunications Utilities.

(a) **Purpose.** The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.

(b) **Application.** This section, including any reference in this section to requirements in 47 Code of Federal Regulations §64.1100 and §64.1150 (relating to changing interexchange carriers), applies to all "telecommunications utilities," as that term is defined in subsection (c)(5) of this section.

(c) **Definitions.** The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **Automatic number identification (ANI)** - The automatic transmission by the local switching system of the originating billing telephone number to an interexchange carrier or other communications carrier in the normal course of telephone operations.

(2) **Calling area** - The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.

(3) **Carrier-initiated change** - A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a